

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Agreement is made and entered into effective on date of signature between

**Rhodes University**

A university incorporated in terms of the Higher Education Act, 1997, and the statute of the Rhodes University, promulgated under Government Notice No. 1199 of 20 September 2002, whose administrative offices are located at Room 220, Main Administration Building, Drostdy Road, Grahamstown, 6140, South Africa herein represented by Dr. Adele Leah Moodly, in her capacity as Registrar of Rhodes University and she being duly authorised thereto

**and**

**\*\*\*\*\*\* (Pty) Ltd**

A company incorporated in South Africa with registration number \*\*\*\*\*\*\*\* and physical address \*\*\*\*\*\*\*\*\*\*\*, herein represented by \*\*\*\*\*\*\*\*, in his/her capacity as \*\*\*\*\*\*\*\*\*\* and s/he being duly authorized thereto.

Whereas, the parties are interested in discussing **the \*\*\*\*\*\*\*\*\*\* based on the Rhodes University’s intellectual property** and in connection with these discussions, certain information that it believes to be proprietary and confidential, and neither party is willing to proceed with these discussions unless they have an agreement restricting further disclosure or use of this information.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows :

1. Definition of Confidential Information. The term “Confidential Information” shall include all scientific, technical, business, financial, or marketing Information which one party (the “Disclosing Party”) discloses to the other party (the “Receiving Party”) in connection with their discussions and which is identified as being confidential, including any Information learned by a Receiving Party during any visit to the Disclosing Party’s facilities. The parties agree that this Agreement is not intended to restrict use or disclosure of any portion of such Information which :
* Is now or later made known to the public through no default by the Receiving Party of its obligations under this Agreement;
* The Receiving Party can show was in its possession prior to the earliest disclosure by the Disclosing Party, as evidenced by written documents in its files;
* Is rightfully received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party;
* Is independently developed by the Receiving Party by persons who did not have access to Confidential Information of the Disclosing party; or
* Is disclosed by the Receiving Party after receipt of written permission from the Disclosing Party.
1. Obligation of Confidentiality. A Receiving Party agrees to hold in confidence and not publish or disclose to any third parties any of the Confidential Information of the Disclosing Party without the prior consent of the Disclosing Party. Each party agrees to use the same degree of care (and in any event not less than reasonable care) to safeguard the confidentiality of the Confidential Information that it uses to protect its own secret information. A Receiving Party agrees to limit any disclosure of the Confidential Information only to those of its employees and outside professional advisors who have a need to know and who are bound by confidentiality obligations, and to advise such persons of the Receiving Party’s obligations under this Agreement.
2. Use of Confidential Information. Each party agrees to use Confidential Information received from the other party only (i) to evaluate its interest in pursuing the collaborative or business possibility with the other party, and (ii) for any further use which may be agreed to in terms of a further agreement between the parties pursuant to these discussions, but not for any other purpose. All Confidential Information furnished pursuant to this Agreement shall be returned promptly by the Receiving Party to the Disclosing Party upon written request by the Disclosing Party.
3. Return of Information. All tangible materials received from the Disclosing Party or generated by the Receiving Party and containing Confidential Information shall be the property of the Disclosing Party, and the Receiving Party shall deliver all such materials to the Disclosing Party upon the earlier of termination of the Agreement or the request of the Disclosing Party.
4. Required Disclosure. If the Receiving Party is requested or required by subpoena, court order, or similar process to disclose any Confidential Information, the parties agree that the Receiving Party will provide the Disclosing Party with prompt notice of such request(s) so that the Disclosing Party may seek an appropriate protective order and/or waive the Receiving Party’s compliance with the provisions of this Agreement.
5. No License. Nothing contained herein shall be construed to grant a Receiving Party any immunity or license under any intellectual property right of the Disclosing Party.
6. Term of Obligation. The parties’ obligations concerning nondisclosure of Confidential Information contained in the above paragraphs shall continue for five (5) years from the date of each disclosure, unless otherwise agreed between the parties, and then terminate.
7. No Violation. Each party represents that its compliance with the terms of this Agreement will not violate any duty which such party may have to any other person or entity, including obligations concerning providing services to others, confidentiality of proprietary information and assignment of Inventions, ideas, patents or copyrights.
8. General.
* This Agreement shall not be assigned by either party without the written consent of the other except in connection with the transfer of substantially all of the assets or business of such party. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties.
* This Agreement shall be construed and interpreted in accordance with the laws of the Republic of South Africa, without regard to its principles concerning the application of laws of other jurisdictions.
* This Agreement is the entire agreement between the parties concerning the disclosure of Confidential Information and superseded all prior oral and written agreements between them. No waiver, alteration or cancellation of any of the provisions of the Agreement shall be binding unless made in writing and signed by the party to be bound.
* If any portion of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect without the invalid or unenforceable provisions.
* The parties hereby represent and warrant that the officials signing this agreement have the power to do so on behalf of the parties.
1. Where International Agreements are Concerned.
* Should any disputes arise between the parties in connection with this Agreement or any items not covered by this Agreement, the parties shall use their best efforts to resolve the dispute through the negotiation between the parties.  Any such dispute not satisfactorily settled by the parties shall be settled in accordance with the rules of International Chamber of Commerce in the place of the respondent, namely, in \*\*\*\*\*\*\* if the respondent is \*\*\*\*\*\*\*, or in Grahamstown South Africa if the respondent is Rhodes University.  Nothing herein shall preclude either party from seeking interim equitable relief from a court of competent jurisdiction.  A request by a party to a court for interim relief shall not affect either party’s obligation hereunder to arbitrate.  The award of such arbitration shall be final and binding on the parties and shall not be subject to appeal to any court, and may be entered in the court of competent jurisdiction for execution forthwith.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

## **Rhodes University**  **(Pty) Ltd**

By: …………………………………. By: ………………………………………

 Signature Signature

Name: …………………….. Name: …………………………………..

Title: ………………….. Title: ……………………………………

# Date: ………………….. Date: ……………………………………